EXHIBIT A TO APPELLANTS' BRIEF.

Supreme Court of the United States.

No. ..., October Term, 19....

Ruben K. King, Commissioner of the State Department of Pensions and Security, State of Alabama, et al., Appellants,

v.

Mrs. Sylvester Smith, Individually and on Behalf of Her Minor Children.

Order.

Upon Consideration of the application of counsel for appellants, and of the opposition thereto,

It Is Ordered that the execution and enforcement of the decree of the U. S. District Court for the Middle District of Alabama be, and the same is hereby, stayed pending the docketing of the appeal within thirty days from this date. Should the appeal be so docketed, this stay is to remain in effect pending the Court's consideration of such appeal. In the event the judgment is affirmed or the appeal is dismissed, this stay shall expire automatically. Should the Court note probable jurisdiction or postpone consideration of the jurisdictional aspect until a hearing on the merits, this stay is to remain in effect pending the issuance of the judgment of this Court.

/s/ Hugo L. Black,
Associate Justice of the Supreme Court of the United States.

Dated this 27th day of November, 1967.

EXHIBIT B TO APPELLANTS' BRIEF.

Supreme Court of the United States.

No. 949, October Term, 1967.

Reuben K. King, Commissioner of the State Department of Pensions and Security, Alabama, et al., Appellants,

vs.

Sylvester Smith, Individually and on Behalf of Her Minor Children, Etc., et al.

Order.

Upon Consideration of the application of counsel for the appellees and of the opposition of counsel for the appellants,

It Is Ordered that my stay order of November 27, 1967 be, and the same is hereby, vacated for the reasons stated in the attached opinion.

/s/ Hugo L. Black,
Associate Justice of the Supreme Court of the United States.

Dated this 29th day of January, 1968.

Supreme Court of the United States.

King v. Smith.

No. 949.—In re Vacation of Stay Issued on November 27, 1967.

[January 29, 1968.]

Mr. Justice Black:

This case is now before me on the appellee's motion to vacate the stay of judgment which I granted on November 27, 1967. The court below held unconstitutional a regulation of the Alabama Department of Pensions and Security which makes certain children ineligible for welfare assistance whenever their mother is cohabiting with a man other than her husband, a so-called "substitute father." ... F. Supp. ... (D. C. M. D. Ala. 1967). The District Court's decree ordered immediate restoration to the welfare rolls of all children who had been disqualified solely because of the "substitute father" regulation. Since the State's arguments in support of the regulation were not frivolous, and since the decree would require the State to pay out substantial sums of money which could never be recovered if the judgment is ultimately reversed, I granted the State's application for a stay. Probable jurisdiction over the appeal was noted by this Court on January 22, 1968. ... U. S. ....

A recent congressional amendment (81 Stat. 821, 894) to the Social Security Act (42 U. S. C. § 601 *et seq.* (1964)), effective January 2, 1968, significantly alters the considerations bearing on the desirability of a stay pending our final judgment, and I have concluded that in light of this factor, not present when I considered this case in November, the stay entered at that time should be vacated. The new amendment places a ceiling on the number of dependent children for whom federal sharing

in state assistance programs is available. Although this ceiling will not go into effect until July 1, 1968, a crucial figure in determining the level of the ceiling is the average number of children for whom monthly payments are made during the first three months of this year. In a memorandum filed at my request, the Solicitor General of the United States has stated that the Department of Health, Education, and Welfare reads the new statute to require actual payments during January, February, and March to all children who are to be included in the computation of this ceiling. If the judgment below is ultimately affirmed and if the Government's reading of the new law is not rejected in a proper lawsuit, this Court's order to restore appellees and others similarly situated to the welfare rolls could not, therefore, affect the number used to compute the ceiling.

The impact of the stay on welfare recipients in Alabama is thus considerably more serious now than it was prior to enactment of the new statute. If the judgment below is affirmed, appellees and the class they represent, a group estimated by the State to total 15,000 to 20,000 persons, will be restored to the welfare rolls for the future, but federal contributions will remain fixed in relation to the past level. The State of Alabama will then be forced either to reduce the level of payments to *all* children or to approve a great increase in the state and local funds available, so that the previous welfare allowances, ordinarily supported up to 80% or more by federal funds, could be granted to the new recipients without any federal support. Prior to enactment of the statute the stay meant only that in the event of ultimate affirmance, relief for appellees and the class they represent would have been postponed several months. Under the new statute, however, the stay now means in addition that total payments available for *all* dependent children may be reduced and that this reduction may remain

in effect for an indefinite period. Under these circumstances, the possibility of injury to the State from the judgment below would appear to be more than offset by the possibility under the stay of decreased federal welfare assistance to all dependent children within the State for an indefinite period. Thus, the stay is vacated.

It is so ordered.

EXHIBIT C TO APPELLANTS' BRIEF.

In the United States District Court for the Middle District of Alabama, Northern Division.

Mrs. Sylvester Smith, et al.,
Plaintiffs,
vs.
Ruben K. King, et al.,
Defendants.
Civil Action No. 2495-N.

Motion.

(Filed Jan. 31, 1968.)

Attorneys for Defendants were notified by telephone on January 30, 1968, by the office of the Clerk of the United States Supreme Court that the Order entered by Justice Hugo L. Black staying the mandate of this Court in the above styled cause has been vacated. The Department of Pensions and Security has, therefore, immediately taken action to follow the decree of this Court in recertifying cases. The Department is attempting to have the cases recertified effective for the month of January 1968, if possible under State and Federal regulations, in order not to lose any Federal funds available for these families under the ADC "freeze" provision of the 1967 Social Security Amendment Act, P. L. 90-248, 81 Stat. 821, 894. According to the decree of this Court entered November 8, 1967, Defendant King was directed to compile and file with the Clerk of this Court within not less than 90 days from the date of the Order a list setting forth the names and addresses of the individuals who have been restored to the Alabama Aid to Dependent Children rolls pursuant to the Opinion and Decree of this Court. Defendants move the Court for an order granting Defendant King thirty

days from the date of the order vacating the stay in which to compile and present to this Court the list of persons restored to the Alabama Aid to Dependent Children rolls pursuant to the Opinion and Decree of the Court.

Defendants further move the Court to issue an appropriate order to protect the list of the names and addresses of persons restored to the Alabama Aid to Dependent Children rolls from public disclosure and to protect the confidential nature of the list.

Respectfully submitted,

/s/ MacDonald Gallion,
MacDonald Gallion,
Attorney General,

/s/ Mary Lee Stapp,
Mrs. Mary Lee Stapp,
Assistant Attorney General,

/s/ Carol F. Miller,
Mrs. Carol F. Miller,
Assistant Attorney General,

Attorneys for Defendants.

Proof of Service.

I, Mrs. Mary Lee Stapp, one of the Attorneys for Appellants and a Member of the Bar of the Supreme Court of the United States, hereby certify that on the 31st day of January, 1968, I served copies of the foregoing Motion on the several parties hereto as follows:

1. On the United States, by mailing a copy thereof in a duly addressed envelope with air mail postage prepaid, to Honorable Erwin N. Griswold, Solicitor General of the United States, Department of Justice, Washington, D. C. 20530; to Honorable Ramsey Clark, Attorney General of

the United States, Department of Justice, Washington, D. C. 20530; to Walter Gorman, Esquire, Department of Justice, Washington, D. C. 20530; and by mailing a copy thereof in a duly addressed envelope with first class postage prepaid, to Honorable Ben Hardeman, United States Attorney for the Middle District of Alabama, Federal Building, Montgomery, Alabama 36104.

2. On the Appellees by mailing copies thereof to the respective attorneys of record as follows: A copy thereof in a duly addressed envelope with air mail postage prepaid, to Martin Garbus, Esquire, 156 5th Avenue, New York, New York 10010; and by mailing a copy thereof in a duly addressed envelope with first class postage prepaid to Charles S. Conley, Esquire, 315 South Bainbridge, Montgomery, Alabama 36104; and Alvin J. Bronstein, Esquire, 603 North Farish Street, Jackson, Mississippi 39202.

/s/ Mary Lee Stapp,
Mrs. Mary Lee Stapp,
Assistant Attorney General of Alabama,
Administrative Building,
64 North Union Street,
Montgomery, Alabama 36104.

EXHIBIT D TO APPELLANTS' BRIEF.

In the United States District Court for the Middle District of Alabama, Northern Division.

Mrs. Sylvester Smith, Individually, and on Behalf of Her Minor Children, Ida Elizabeth Smith, Ernestine Smith, Willie Louis Smith and Willie James Smith and on Behalf of All Other Mothers of Needy, Dependent Children Similarly Situated, Plaintiffs, vs. Ruben K. King, Commissioner of the State Department of Pensions and Security, State of Alabama, et al., Defendants.	Civil Action No. 2495-N.

Order.

(Filed Feb. 1, 1968.)

This Court entered an Order and Decree in this case on November 8, 1967. On November 27, 1967, execution and enforcement of the Decree was stayed by an Order entered by a Justice of the United States Supreme Court. The said stay order has been vacated on January 29, 1968, and the Order and Decree of this Court of November 8, 1967, is again in effect.

The defendants, Ruben K. King, Commissioner of the State Department of Pensions and Security, et al., have filed with this Court a motion representing to the Court:

"The Department of Pensions and Security has, therefore, immediately [after entry of the said vacation

order of January 29, 1968] taken action to follow the decree of this Court in recertifying cases. The Department is attempting to have the cases recertified effective for the month of January, 1968, if possible under State and Federal regulations, in order not to lose any Federal funds available for these families under the ADC 'freeze' provision of the 1967 Social Security Amendment Act, P. L. 90-248, 81 Stat. 821, 894."

The defendants request that defendant Ruben K. King be given additional time in which to comply with paragraph (4) of the Decree of this Court of November 8, 1967, which required that he compile and file with the Clerk of this Court within not less than 90 days from November 8, 1967, a list setting forth the names and addresses of the individuals who have been restored to the Alabama Aid to Dependent Children rolls pursuant to the Opinion and Decree of this Court.

The defendant Ruben K. King is granted additional time up to and including February 26, 1968, to comply with paragraph (4) of the Decree of this Court dated November 8, 1967.

This Order is entered by and with the agreement of each member of this panel.

Done, this the 1st day of February, 1969.

John Godbold,
United States Circuit Judge.

EXHIBIT E TO APPELLANTS' BRIEF.

State of Alabama

Department of Pensions and Security
Montgomery

Cases Closed and Applications Rejected Because of Substitute Parent Policy Initiated in July 1964*

	Number of Families	Estimated Number of Children[1]	Estimated Number of Recipients[2]
Total	5,626	18,622	23,348
Cases Closed	3,707	12,270	15,384
Applications Rejected	1,919	6,352	7,964

Prepared by: Bureau of Research and Statistics

February 29, 1968

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* Based on information submitted by county departments of pensions and security.

[1] Estimate based on an average of 3.31 children per family.

[2] Estimate based on an average of 4.15 recipients per family.

State of Alabama

Department of Pensions and Security
Montgomery

Cases Closed and Applications Rejected Because of Substitute Parent Policy Classified by Later Action Taken*

	Number of Families	Estimated Number of Children	Estimated Number of Recipients
Total	5,626	18,622	23,348
Approved	2,434	8,057	10,101
Denied or found to be ineligible[1]	857	2,837	3,557
Referred to another county	78	258	324
Moved or unable to locate	574	1,900	2,382
Did not wish to apply	313	1,036	1,299
Reopened and later terminated	152	503	631
Children included in another ADC case..	95	314	394
Application taken but pending final clearance	356	1,178	1,477
Action pending[2]	767	2,539	3,183

Prepared by: Bureau of Research and Statistics

February 29, 1968

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* Based on information submitted by county departments of pensions and security.

1 Many of these had married or secured employment and were able to provide for their families.

2 Agency has written many of these requesting that they come in or contact the Agency.

MEMORANDUM

February 29, 1968

To: Mr. Ruben K. King, Commissioner

From: Margaret Jordan, Director
Bureau of Research and Statistics

Subject: *Applications and Cases Affected by the Substitute Parent Policy*

As you know the County Directors have submitted to the State Office a listing of *Applications and Cases Affected by the Substitute Parent Policy* with information with reference to action taken pursuant to the Court Order of November 8 and following the vacation of the Stay by the Supreme Court. The summary analysis is attached.

The analysis gives additional emphasis to the following points:—

(1) The Aid to Dependent Children caseload is not a static caseload—the composition of the caseload is constantly changing as is reflected by Table 1 which indicates that 6,907 families were added during the past year and 6,642 were closed during the year. Also, Table 2 indicates that many Aid to Dependent Children Families receive aid for a comparatively short period of time. We were of course familiar with these characteristics of the ADC caseload as a whole; however, the report indicates that the same characteristics were apparently also typical of this segment of the caseload which was affected by the Substitute Parent Policy. This report also serves to remind us that a large portion of the total population is on the move and that for many people you don't go back and find them at the same spot and in exactly the same situation as you left them three or more years ago.

(2) The analysis of these cases affected by the Substitute Parent Policy also indicates that the purpose of the policy was fulfilled in that it encouraged families to utilize any available resources and to become independent wherever possible. The County Directors reported that many of these people had secured employment and many had married and were now able to provide for their families. The report indicates that out of a total of 5,626 applications rejected and cases closed because of the policy, 2,434 have been reinstated and approved for payment, and 356 applications are in the process of being cleared. The report also gives information with reference to the present status and action taken with reference to the other applications and cases which were affected by the Substitute Parent Policy.

(3) Again with reference to the fact that the ADC caseload is not a static caseload as long as this policy is not in effect it is believed that the caseload will continue to increase as with a less restrictive program a higher proportion of these who apply will be eligible for assistance than were eligible during the past several years. This means, of course, that the limited funds which are available would have to be used to provide for a larger number of families and children.

TABLE 1

Applications and Cases Handled By County Departments of Pensions and Security

October 1, 1966 — September 30, 1967

	Total	Old Age Pensions	Aid to Blind	Aid to Dependent Children[1]	Aid to Children in Foster Care	Aid to Children Receiving Day Care	Aid to Permanently and Totally Disabled	Temporary Aid	Medical Assistance for the Aged	Service Only[2]
APPLICATIONS:										
Pending from preceding year	6,167	2,471	71	1,798	81	5	1,584	107	50	xx
Received during year	43,623	19,706	486	11,483	1,518	583	8,612	519	716	xx
Total during year	49,790	22,177	557	13,281	1,599	588	10,196	626	766	xx
Disposed of during year	43,868	20,201	444	11,394	1,599	584	8,484	420	742	xx
Pending at end of year	5,922	1,976	113	1,887	0	4	1,712	206	24	xx
CASES APPROVED:										
Continued from preceding year	157,082	112,488	1,873	17,192	2,199	474	15,191	97	277	7,291
Added during year	33,465	14,019	245	6,907	1,520	563	3,387	365	367	6,092
Total during year	190,547	126,507	2,118	24,099	3,719	1,037	18,578	462	644	13,383
Closed during year	31,180	12,568	255	6,642	1,367	443	3,066	335	493	6,011
Continued to next year	159,367	113,939	1,863	17,457	2,352	594	15,512	127	151	7,372

[1] Figures shown represent number of families.

[2] Families who do not receive financial assistance but who are in need of casework services.

TABLE 2

NUMBER OF FAMILIES RECEIVING AID TO DEPENDENT CHILDREN BY LENGTH OF TIME SINCE MOST RECENT OPENING FOR ADC AND BY NUMBER OF OPENINGS FOR ADC PRIOR TO DATE OF MOST RECENT OPENING

DECEMBER 1961

LENGTH OF TIME SINCE MOST RECENT OPENING 1/	Total Families		NUMBER OF ADC OPENINGS PRIOR TO DATE OF MOST RECENT OPENING				
	Number	Percent	No Previous Openings	One Previous Opening	Two Previous Openings	Three or more Previous Openings	Unknown
TOTAL	21,336	100.0%	14,805	4,636	1,185	524	186
Less than 6 months	2,640	12.4	1,709	593	169	135	34
6 months but less than 1 year	2,385	11.2	1,387	745	169	84	0
1 year but less than 2	3,147	14.7	2,064	728	270	68	17
2 years but less than 3	2,538	11.9	1,658	626	169	51	34
3 years but less than 4	2,064	9.7	1,387	456	119	68	34
4 years but less than 5	2,030	9.5	1,371	507	102	50	0
5 years but less than 7	2,471	11.6	1,929	372	102	51	17
7 years but less than 10	2,166	10.1	1,743	355	68	0	0
10 years or more	1,895	8.9	1,557	254	17	17	50

1/ The median length of time since most recent opening for ADC was 3.0 years.

Dallas County

Department of Pensions and Security
P. O. Box 366
Selma, Alabama 36701

February 20, 1968

Mrs. Mary Lee Stapp
Legal Advisor
State Department of
Pensions and Security
64 North Union Street
Montgomery, Alabama

Dear Mrs. Stapp:

Mrs. Wilkinson requested that I make a survey of the cases closed or denied for the substitute father policy since July 1964. We thought that you might be interested in seeing the results of this survey.

We are enclosing the survey, as well as the complete list of cases approved since November 8, 1967, that had previously been denied or closed. We are also sending a copy of our control list.

If you need any additional information, do not hesitate to contact us.

Sincerely,

/s/ Jacquelyn Stancil,
Mrs. Jacquelyn Stancil,
Pension Counsellor.

Approved:

/s/ Augusta L. Wilkinson,
Mrs. Clinton S. Wilkinson, Sr., ACSW,
Director.

JS/dhb

Cases Closed in Dallas County For Substitute Father Policy:

Action Taken:

Recertified	7/64 — 10/67	48
Recertified	11/67 — 1/31/68	11
Recertified	2/1/68 — Present	56
Recertified in another home		* 4
	Total Recertified	—120
Pending	Total Pending	— 8

Not to Be Recertified

Reason:

Married	18
Did not wish to reapply	15
Were not eligible because of sufficient income to meet need	15
Did not meet eligibility requirements other than need	8
Moved out of State	6
Moved out of County	3
Unable to locate	1
Total Not Recertified	— 66
Grand Total	—194

Application Denied Because of Substitute Father Policy

Certified	7/64 — 10/67	5
Certified	11/67 — 1/30/68	3
Certified	2/1/68 — Present	20
	Total Certified	— 28
Pending	Total Pending	— 1

Not to Be Certified

Reason:

Married	6
Did not wish to apply	2
Left County	1
Income sufficient to meet need	4
Did not meet eligibility requirements other than need	1
Unable to locate	1
Total	— 15
Grand Total	— 44

* Two of these were recertified prior to November, 1967, and two were recertified after November, 1967.

EXHIBIT F TO APPELLANTS' BRIEF.

(Outline of Equal Protection Issues in Cases Cited by the Court Below.)

In *Morey v. Doud*, supra, the State statute permitted American Express to sell money orders, but prohibited other private companies from doing so. This was a statutory exception of a particular business entity and not of a generic category. Dissent, *Justice Black*: the Legislative discrimination between a company of known solvency and others of unknown responsibility "can hardly be called 'invidious.'" The general provisions of the Constitution should not be used to restrict narrowly State power over domestic economic affairs. Dissent, *Justices Frankfurter and Harlan*: The Legislature should be allowed to look at practical facts; even if putting American Express Company in a separate category may at some future time no longer be valid, then would be the time to strike down the legislation. In *Tigner v. Texas*, 310 U. S. 141, 84 L. Ed. 1124, 60 S. Ct. 879, 130 A. L. R. 1321 (1939) the Texas anti-trust law exempted agricultural products from its operation. Defendant was convicted of fixing price of beer and attacked the statute as violating Equal Protection. The Supreme Court upheld the statute, pointing out the purpose to prevent monopolies—a fear which had not attached to agricultural interests; it was reasonable for the Legislature to classify agriculture and industry differently for this purpose; the distinction must be practical, not abstract or theoretical. In *Gulf, Colorado & Santa Fe Ry. Co. v. Ellis*, 165 U. S. 150, 155, 17 S. Ct. 255, 41 L. Ed. 666 (1897) the legislation involved required railroad corporations to pay attorney's fees to successful litigants against the railroad. The Court held this violated equal protection, since not all debtors were treated alike and the classification did not bear any relation to the

business of railroad transportation. Three Justices dissented, saying it was a matter of costs, which are creatures of statute and should not be interfered with. In *Erb v. Morasch,* 177 U. S. 584, 20 S. Ct. 819, 44 L. Ed. 897, cited in *Morey v. Doud, supra,* it was held not unreasonable to except, by name, one railroad from the requirement that trains go through the city at six miles per hour. The excepted one ran in outer parts of town, the tracks were fenced; all the factual circumstances justified a different rule (classification). In *McLaughlin v. Florida,* 379 U. S. 184, 85 S. Ct. 283, 13 L. Ed. 2d 222 (1964) the defendants were convicted under statute prohibiting an interracial couple cohabiting. Held that the statute "trenches upon the constitutionally protected freedom from invidious official discrimination based on race." It is a strong policy of the Equal Protection Clause to eliminate racial discrimination from official sources in the States. In *Hernandez v. Texas,* 347 U. S. 475, 74 S. Ct. 667, 98 L. Ed. 866 (1954) the defendant was an American of Mexican descent and he contended that persons of his class of persons were systematically excluded from juries. The conviction was reversed. The Court held that the question of whether such a separate class existed was one of fact and defendant had established that it did exist in his community. Exclusion of a group is prohibited by Fourteenth Amendment. (no dissent) In *Atchison, T. & S. F. R. Co. v. Matthews,* 174 U. S. 96, 19 S. Ct. 609, 612-613, 43 L. Ed. 909, the Kansas State statutes required railroads to pay damages and attorney's fees upon proof that the operation of the railroad caused fire damages to plaintiff. The Court held statute valid against the improper classification argument, because its purpose was to make railroads prevent fire from escaping trains. The purpose was not to make railroads pay their debts (cf. Gulf etc. v. Sanis[illegible]). The Court said prevention of fire comes under the police power of a state, while enforcement of debt payment does not,

hence the different result in the classifications involved. Four Justices dissented, pointing out that if a state required a duty of a Railroad, such as fencing, and the Railroad violated its duty, then a penalty could be affixed (payable either to the State or to injured party); but this isn't the case—here the railroad is penalized if it contests a case in court; this is not equal protection. In *American Sugar Ref. Co. v. Louisiana,* 179 U. S. 89, 21 S. Ct. 43, 45 L. Ed. 102 (1900), the classification was for tax purposes. The Louisiana statute taxed sugar refineries other than those operated by persons who grew and refined their own product. It was held to be a valid distinction—i. e. an encouragement to agriculture. The right to sell is inherent in the right to produce; refined sugar is a natural and ultimate product of the farm, as distinguished from a product manufactured by addition of other ingredients. Case was cited in which tax on retailers of wines was not applicable to persons who grew grapes and sold wine as product of his own. In *Southern R. Co. v. Greene,* 216 U. S. 400, 417, 30 S. Ct. 287, 291, 54 L. Ed. 536 (1909), the question was whether an out of State railroad corporation doing business in Alabama could be required to pay a tax for the privilege of doing business within the State, which tax was not imposed on like domestic corporations? The Court said "the equal protection of the laws means subjection to equal laws, applying alike to all in the same situation" and held that the classification is in violation of Equal Protection, as it puts different burden on foreign railroad corporations doing the same kind of business as domestic ones. The distinction Alabama tried to base the classification on was that a domestic corporation paid tax for privilege of being a corporation, while a foreign one paid for privilege of doing business within the State. In *Lindsley v. Natural Carbonic Gas Co.,* 220 U. S. 61, 31 S. Ct. 337, 55 L. Ed. 369 (1910), the New York statute prohibited pumping mineral waters for the purpose of

selling carbonic gas therefrom separately and also prohibited pumping from wells penetrating the rock. The classification was upheld and the Court said some reasonable basis of fact for the distinction could be conceived. In *Royster Guano Co. v. Virginia,* 253 U. S. 412, 40 S. Ct. 560, 64 L. Ed. 989 (1919), the State of Virginia imposed state income tax on all earnings of a corporation, including that earned within and out of the State; corporations organized in Virginia but doing business *only* out of State were exempt from the income tax. The classification was held arbitrary; and it was held that income derived by Virginia corporations from business done out of State rests on the same basis, whether or not the corporation does business within the State also. The two Justices dissenting saw a conceivable reason for differentiation between the two classes of domestic corporations. In *Air-Way Elec. Appl. Corp. v. Day,* 266 U. S. 71, 45 S. Ct. 12, 69 L. Ed. 169 (1924), the statute levied a tax on foreign corporations on the basis of the number of authorized non-par value shares; this was held an unreasonable classification with no reasonable relation to value of the privilege for which imposed. In *Louisville Gas & Elec. Co. v. Coltman,* 277 U. S. 32, 48 S. Ct. 423, 72 L. Ed. 770 (1927), the Kentucky statute levied a tax on all mortgages running more than five years. It was held arbitrary and violative of Equal Protection. Four Justices dissented. In *Hartford Steam Boiler Inspection & Ins. Co. v. Harrison,* 301 U. S. 459, 57 S. Ct. 838, 81 L. Ed. 1223 (1936), the Georgia statute permitting mutual insurance companies to act through salaried resident employees, but prohibiting stock insurance companies from doing so was held violative of Equal Protection under Fourteenth Amendment, as unreasonable classification in that the method of compensating agents bore no reasonable relation to economy or efficiency. Four Justices dissented. In *Skinner v. Oklahoma,* 316 U. S. 535, 62 S. Ct. 1110, 86 L. Ed. 1655 (1941), the Okla-

homa criminal sterilization law was held unconstitutional under Equal Protection Clause; if a person was convicted of embezzlement he was immune to the law, but if convicted three times of larceny was subject to it. The different crimes were not shown to indicate inheritable characteristics. In *Kotch v. Board of River Port Pilot Comrs.*, 330 U. S. 552, 67 S. Ct. 910, 91 L. Ed. 1093 (1946), the Court upheld the practice of the Pilots' Association of taking in only their friends and relatives to be river pilots. The Court said pilotage is a unique institution and the practice does not violate equal protection. Four Justices dissented, saying it amounts to designating members of certain families as only ones eligible to become pilots; consanguinity is an arbitrary test. In *Railway Express Agency, Inc. v. New York,* 336 U. S. 106, 69 S. Ct. 463, 93 L. Ed. 533 (1948), a New York traffic regulation prohibited advertising vehicles; notices could be on delivery vehicles as long as they were not used merely or mainly for advertising. This was held not to be a violation of Equal Protection. Practical considerations based on experience must be used to determine whether a classification has a relation to the purpose for which it was made, rather than upon theoretical inconsistencies. In *Griffin v. Illinois,* 351 U. S. 12, 76 S. Ct. 585, 100 L. Ed. 891 (1955), it was held to be a violation of Equal Protection and Due Process to deny a defendant an appellate review because he could not afford to pay for a transcript, while granting such review to all other defendants. The Court stated "In criminal trials a State can no more discriminate on account of poverty than on account of religion, race, or color." Four Justices dissented. In *Allied Stores of Ohio, Inc. v. Bowers,* 358 U. S. 522, 79 S. Ct. 437, 3 L. Ed. 2d 480 (1958), an Ohio tax statute exempted from taxation goods belonging to a nonresident if held in storage in Ohio; residents' goods in storage were taxable. This was held to be valid in

that it rests upon a conceivable state of facts constituting a distinction. The purpose was to encourage location in the State of industries; to serve this purpose by exempting them does not violate Equal Protection. In *Central R. Co. v. Pennsylvania,* 370 U. S. 607, 82 S. Ct. 1297, 8 L. Ed. 2d 720 (1961), the Pennsylvania statute differentiated for tax purposes between railroads having tracks only within the State and railroads whose tracks were both within and out of the State. Several bases for such classification were considered (the Court gave some examples of possible reasons). Equal Protection was a minor consideration in this case. In *Douglas v. California,* 372 U. S. 353, 83 S. Ct. 814, 9 L. Ed. 2d 811 (1962), the indigent defendants charged with and convicted of felonies were denied counsel on appeal; this was held to be an invidious discrimination. "There can be no equal justice where the kind of an appeal a man enjoys 'depends on the amount of money he has.'" citing *Griffin v. Illinois,* supra. Three Justices dissented. In *Rinaldi v. Yeager,* 384 U. S. 305, 86 S. Ct. 1497, 16 L. Ed. 2d 577 (1965), the defendant appealed in forma pauperis and the county withheld his prisoner's pay to pay for the transcript. Under New Jersey statute only those confined in State institutions were required to make such reimbursement. Supreme Court held this a violation of Equal Protection. One Justice dissented. The majority said that since this reimbursement was not required of all those convicted, i. e. not to those on probation, or suspended sentence or those sentenced only to pay a fine, it did not apply equally to all in the same classification. State argued that the administrative time and cost were too great to try to collect from anyone except those in State institution, where the pay could be withheld. This argument held invalid. In a California criminal case, *Anders v. California,* 386 U. S. 738 (1967) the question was the extent to which appointed counsel

must go to prosecute an appeal. The attorney determined there was no merit in the appeal and so advised court and defendant. The defendant filed his own brief on appeal and lost; six years later he brought habeas corpus proceedings, claiming deprivation of counsel on appeal. The Supreme Court reversed the conviction; counsel on appeal must be in the role of advocate, not just amicus curiae. Three Justices dissented. In another California criminal case, *Swenson v. Bosler,* 386 U. S. 258, 87 S. Ct. 996, 18 L. Ed. 2d 33 (1967), an indigent defendant did not have counsel on appeal; trial counsel filed notice of appeal and motion for new trial, specifying issues. Conviction was reversed by Court of Appeals and this decision was affirmed by the Supreme Court. An indigent defendant has the right to counsel on appeal whether or not he requests counsel. The Court followed the *Douglas,* supra, decision. *McGowan v. Maryland,* 366 U. S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1960), is a criminal case involving sale of merchandise on Sunday in violation of Maryland statute. Court upheld the statute against Equal Protection, Due Process and establishment of religious arguments. The classification question concerned allowing certain retailers in one county (those operating bathing beaches and amusement parks) to operate on Sunday, while other retailers there could not. The Legislature could find valid reasons for the distinctions—the commodities exempted and the places relate to the people's ability to enjoy and benefit from their day of rest. (Latter part from concurring opinion of Justice Frankfurter). Justice Douglas dissented. On the Equal Protection argument the Court said "The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective." The Legislature could reasonably find that Sunday sale of exempted items enhanced the health or recreation of people relaxing on Sunday. The distinc-

tions are not shown by the record to be invidious; nor was it shown that there were not local customs which rationally call for the classification. Also the Court said it found no invidious discrimination in treating people in different counties differently; territorial uniformity not required. *Two Guys from Harrison—Allentown, Inc. v. McGinley,* 366 U. S. 582, 81 S. Ct. 1135, 6 L. Ed. 2d 551 (1960), is a criminal case involving Pennsylvania Sunday closing laws. Same questions and same holding as in McGowan case; same concurring opinion and dissent.

EXHIBIT G TO APPELLANTS' BRIEF.

Department of Health, Education, and Welfare
Social and Rehabilitation Service
Washington, D. C. 20201

January 22, 1968

TO STATE AGENCIES ADMINISTERING APPROVED PUBLIC ASSISTANCE PLANS

Subject: Limitation on Federal Sharing in AFDC—Public Law 90-248)

The Social Security Amendments of 1967 (P. L. 90-248) was approved by the President on January 2, 1968.

We are preparing general interpretative material with respect to the implementation of P. L. 90-248 which we hope to be able to distribute in preliminary form prior to the meeting in Washington, D. C., with State officials on February 19 and 20, 1968.

Since the States will need to start immediately setting up a system for making the computations required under the so-called AFDC "freeze" provision, we wanted you to have the benefit of our current thinking on this subject. The enclosed material explains how the provision works and sets forth the method which will be acceptable for making the computations. In addition, we have included our preliminary and still tentative interpretation of the substantive aspect of the provision including some of the options open to States in complying with it.

Sincerely,

/s/ Mary E. Switzer,
Mary E. Switzer,
Administrator.

Enclosure

DRAFT.

January 22, 1968

Implementation of the AFDC Freeze.

The effect of the AFDC "freeze", which becomes effective July 1, 1968, is to limit the number of children who are under age 18 and receiving AFDC because of absence of a parent, with respect to whom Federal payments may be made.

For each State, the average monthly number of children under age 18 receiving AFDC because of absence of a parent (for reasons other than the death of such parent) during the January 1968 quarter will set the maximum for Federal matching for the July 1968 and October 1968 quarters. To the extent that the average monthly number of such children for the July quarter or the October quarter is greater than for the January quarter, Federal financial participation will not be available.

To determine the maximum number of such children whose payments are subject to Federal financial participation during the calendar year 1969, the 1968 proportion (i. e., the proportion of all children under 18 in the State on January 1, 1968 represented by the average monthly number under 18 receiving aid, for the reason specified, in the months of January, February, and March 1968) will be applied to the child population under 18 estimated for January 1, 1969. If the child population increases between January 1968 and January 1969, then the number who may be aided with Federal sharing also will be larger in 1969. For each of the four quarters in calendar 1969, States must determine the average monthly number of such children under 18 who are aided, and exclude from the Federal claim the number that exceeds the maximum number determined by applying the 1968 rate to the estimated child population on January 1, 1969.

States in which the number of eligible children exceeds the number in whose assistance the Federal Government will share, must make a decision, either:

a. To provide assistance in accordance with the current State plan, with the State paying the total assistance costs for the "excess children", or

b. To use some device to keep the costs of the program to the State at approximately the level which assures States that they will not need to increase State expenditures.

For States which choose alternative b:

1. States may not maintain waiting lists, or otherwise fail to follow existing provisions of law that everyone who considers himself eligible may apply and, if he is eligible, may receive assistance promptly.

2. States may not discontinue assistance for the excess cases.

States may, however:

1. Reduce the level of assistance for all AFDC children. Thus, the cost to the State is so reduced, in providing assistance to *all* eligible children, that the State will not be spending more in State funds than formerly.

2. Introduce new or additional eligibility requirements so as to reduce the number of children eligible and, thus, not exceed the ceiling. Any new eligibility provision must meet the test of reasonableness of classification so that persons in like circumstances will continue to be treated alike. Thus, the new eligibility provision would need to be applicable to all children, not just to the "absent from the home" group. Eligibility provisions which meet this test of objectivity include those which attempt to make

ineligible those children who are less in need than others. Thus, the amount of resources which may be held may be reduced, legally responsible relatives may be required to help more than before, and the like.

In adopting such approaches, States should be aware (a) of provisions in the Social Security Amendments of 1967 which may tend to make more individuals eligible, such as the requirements for earnings exemptions, effective July 1, 1969, and for updating AFDC assistance standards and payment maximums, effective July 1, 1969, and ~~(b)~~ that reduction of any assistance payments or number of eligible individuals will result in decreased Federal financial participation and failure to achieve the objectives of the original State plan.

General procedures to be followed.—To obtain the data needed to determine the proportion of children under 18 on January 1, 1968, represented by the average monthly number of children of the specified type aided in the months of January, February, and March, 1968, will require a special study, inasmuch as no State now maintains this information. A study of a sample of cases will serve. For subsequent months, beginning in July 1968, a system must be devised for obtaining, on a continuing basis, information on the number of children of the specified type on whose behalf payments are made. Requirements will be developed and sent to you later. The research consultant of the Social and Rehabilitation Service in each regional office will assist States in planning and executing the sample study of records for January-March 1968. The Assistance Payments Administration will make arrangements to obtain the necessary population estimates from the Bureau of the Census.

The number of children removed from your claim for Federal matching and the amount of assistance given to

them will be reported in the quarterly statement of expenditures, beginning July 1968, on Form FS-142.9-Schedule t-l, in items 1c and 20, respectively. Since the law does not specify *which* children and payments are to be excluded from the Federal claim, subsequent material will provide guidelines as to the method or methods that may be used to identify in your fiscal records the recipient count so excluded and the payments therefore not computable for Federal funds.

EXHIBIT H TO APPELLANTS' BRIEF

"One day my luncheon companion, a sociological writer from Washington, began the conversation by saying: 'What I'd like to do in this article is explore the fluid contexts of the interrelations between the various power centers involved in some of the more pressing parallel concepts of public welfare.'

'Could you be a little more specific?' I asked.

'Well, all these things are coming to fruition. There's a lot going on. But we haven't yet had the kind of public dialogue in-depth which encourages all the interrelated interests, I mean *all* of them, toward some sort of genuine political fluidity.'

'Fluidity of what?'

'Fluidity of *thought*—thought that mirrors the fluctuating bases of this generation. Up till now we've been positive without being futuristic, negative without being retrospective. Your publication would be doing a great service to provide real insights, both tangential and core insights, into the nature of these politico-social, if I may call them so, oscillations.'

'*What* oscillations?' I asked. By now I was getting perturbed, and the clam chowder had not even arrived.

'Look,' my companion said, 'let me put it this way. A student of Confucius once pointed to a flag and said, "See how that flag flaps in the breeze?" and Confucius replied, "Only the mind flaps." The structural changes under the social surfaces in this country are not the realities that are flapping. It's *we*, and we must move on 'that assumption, theoretical or otherwise.'

'It's obvious *something's* flapping.' I said."

North Toward Home, Willie Morris, Houghton Miflin Company, 1967, Boston, 373.

EXHIBIT I TO APPELLANTS' BRIEF.

(Excerpt From Alabama Agency's Brief in Court Below.)

"The statement beginning on page 20 of Plaintiffs' brief concerning the suitable home policy in effect prior to July 1964 appears to be entirely incorrect and apparently the status of the policies themselves and the interpretation of them has been completely misunderstood as well as the agency's position with respect to certain bills which were introduced in the legislature. The history of Alabama's suitable home policy with respect to the question of federal conformity is set out to some extent in Exhibits 1, 2, and 3 submitted during the taking of Mr. Steininger's deposition. There has never been any question of federal conformity with respect to the policy submitted by the Alabama welfare agency nor has there ever been any serious question raised with respect to continued receipt of federal funds or with respect to the policies submitted prior to July 1964. The questions pertaining to federal conformity were evident in the various legislative proposals which the Alabama agency transmitted to the federal agency. Any time any bill is introduced by any legislator which purports to affect the public assistance program, the Alabama state agency immediately transmits such proposal to the federal agency and requests an official interpretation concerning the question of federal conformity. None of the bills in Exhibit 3 were proposals of the Alabama agency. These were legislative proposals by individual legislators. Whereas these proposals might have reflected the views and ideas of certain segments of the public, it was never the position of the Alabama agency that these proposals should be enacted into law. None of the proposals contained in these bills was ever enacted into law."

EXHIBIT J TO APPELLANTS' BRIEF.

(Excerpt From Alabama Agency's Brief in Court Below.)

THE MORALS OF THE POOR SUITABLE HOME—FLEMING ORDER.

Since the days of the Elizabethan poor laws there has been a diminishing requirement in most countries of the world for the poor to be good, pure, and virtuous as a condition precedent to the receipt of public aid. Even though there may always be a hidden desire in the breast of many persons to reward only the "worthy poor,"* the public assistance titles of the Social Security Act and Alabama law make short shrift of the idea that public funds can be distributed only to the worthy in Alabama's public assistance programs. Objective methods of determining eligibility are required in any given category. (See particularly Title 49, § 17 (6), Code of Alabama 1940, as recompiled 1958.) A state does not have to elect to set up a program in any category, but if it does, the state must clearly set up objective standards for determining eligibility within the categories selected. There is no question that in and of itself the morality of the poor cannot be a condition for granting of public assistance. A person can be a dishonest congenital liar, but if his actual situation under law and agency regulations permits him to be eligible for public assistance, his unattractive

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* Eliza's father in *My Fair Lady* poignantly illustrates this in the later Victorian Age as he describes himself as one of the "undeserving poor" and later when confronted with the fact that he has never given Eliza (his illegitimate child) anything, he counters "I gave her the sunsets over Hyde Park." (cf. Zepeda v. Zepeda, 41 Ill. App. 2d 240 (1963), and the plight of the adulterine bastard. The Court in the course of its opinion points out that: ". . . laws cannot temper the cruelty of those who have the epithet 'bastard' nor ease the bitterness in him who hears it, knowing it to be true.")

morals cannot bar him from public assistance eligibility. Yet, in one sense, every state in the Union requires and expects a certain type of morality in this State and Federal program as a part of the method of establishing eligibility. For example, an applicant is expected to tell the truth about his income and resources. The public not only expects correct establishment of eligibility but also the public does not want public funds going to persons who do not need public funds to live on. The state files civil suits, when necessary, to recover funds from persons who have received public assistance for which they were ineligible. In addition, in Alabama, Title 49, § 17 (21), Code of Alabama 1940, as recompiled 1958, provides as follows:

> "Penalty for false representation.—Any person who by means of a false statement knowing it to be false, or by willful misrepresentation, impersonation or other fraudulent device obtains or attempts to obtain or aids or abets any person in obtaining a public assistance grant to which such person is not entitled or a larger amount of grant than that to which he is justly entitled, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars and may be sentenced to hard labor for the county for not exceeding twelve months, or both. (1951, p. 1223, § 20, effective Oct. 1, 1951.)"

The substitute parent policy indirectly requires the refraining from cohabiting in the instance of unmarried persons to establish eligibility. However, regulating the morals of the poor or "supervising the sex life of the poor." is not the purpose of the policy—the purpose is economic and it is to keep the State from underwriting and approving situations which tend to cause or permit illegitimacy and the bringing of children into the world

to families who depend upon the State to care for them and to shift more of the burden of supporting these children on the individuals who are responsible for their procreation, and to shift the burden of determining the meaning of the relationship involving cohabitation to the grantee relative.

One of the objectionable features of Plaintiffs' brief is their insistence that the substitute parent policy is an effort to terminate aid on the basis of the suitability of the home. This, to some degree, assumes that a particular regulation is aimed at the regulation of the morals of the poor. (See also 15 J. Pub. L. 349.) In this case this is an assertion made without any substantial evidence or proof of any sort. In fact the contrary is true.

Defendants submit that the professional social worker's attitude in the Alabama agency relating to these children can best be discovered in Plaintiffs' Exhibit 24. This intensive study made in Dallas County and completed September 30, 1964, shows the ways in which the professional social worker would like to have the necessary money and staff to deal with the situation of needy children who are born in homes where there is the possibility and probability that children will continue to be born out of wedlock as well as other factors relating to "suitability of the home." This study shows that there are so many more problems involved than just the matter of legitimacy that the entire focus of the casework responsibility is primarily centered on finding meaningful ways of helping families find ways out of "unsuitable" situations and helping them to achieve a status of self-help. Defendants do not state that this project comprises the basis for the substitute parent policy. Actually Defendant King testified that he would like to see a much more liberal program undertaken on behalf of all ADC children. One of the liberalizations would certainly include the broadened types of services

described and undertaken in the demonstration project which the agency would like to see made available to every child.

Defendants contend that they are not passing moral judgment on these "live-in" arrangements although there seems to be a belief that such a policy in and of itself forecloses aid because of morals. If the home condition is altogether unsuitable under Albama agency policy, the department pursuant to its own regulations must make appropriate referrals to the Juvenile Courts so that the Juvenile Courts can determine if these children fall under the jurisdiction of such Court as dependent or neglected children who are in particular need of the care and protection of the State in a manner provided by state law. Foster home care or institutional care could be provided if the home is judicially determined "unsuitable" and the child or children determined to be under "insufficient guardianship." See Chapter 7, Title 13, Code of Alabama 1940, as recompiled 1958, and Exhibit 43, Alabama Manual, Part I, II-45, et seq. See especially II-49 which states in part:

> "If the worker and county director agree that a petition should be filed for removal of a child from his home, the record must show what condition of unsuitability exists, what ill effect it has had or is expected to have on the child, what efforts have been made to help the parent improve the situation, the alternate plan which has been made for the child's care and how he is is expected to benefit by it."

EXHIBIT K TO APPELLANTS' BRIEF.

Department of Justice
Washington
20530

Honorable Frank M. Johnson, Jr.
Chief Judge
United States District Court for the
Middle District of Alabama
Post Office Box 35
Montgomery, Alabama 36101

Re: Mrs. Sylvester Smith, et al. v
Rubeh K. King, et al—United
States, amicus curiae and Party

Civil Action No. 2495-N.

Dear Judge Johnson:

This letter is written in reference to our correspondence of April 26, 1967 concerning the captioned matter.

In light of the fact that the Constitutionality of the State regulation has been challenged by private litigants, we do not feel that it would be appropriate for the Government to offer an opinion relating to these issues. However, facts and legal arguments dealing with the Department of Health, Education and Welfare's policies under, and administration of, the Social Security Act (42 U. S. C. 601, et seq.), have been brought before the court and, therefore, the following comments are submitted in the hope of aiding the court, to the extent that Federal policy is relevant to the resolution of this case.

From a reading of the brief of both the plaintiff and the defendant, we believe that some confusion may exist con-

cerning the "labels" attached to various policies involved in this proceeding. This problem probably arises from the differences between the terminology adopted by the State and that in use by the Federal Government with respect to the phrase "suitable home". The Department of Health, Education, and Welfare uses the term "suitable home policy" to refer to an eligibility policy which is based upon the behavior or moral conduct of a parent (most usually the mother). Technically, the application of such a policy would result in finding a recipient ineligible for assistance because the mother engaged in conduct which is generally considered to be immoral.

The policy which the Alabama State agency had adopted and which it refers to as a "suitable home" policy pertains not to eligibility, but rather to situations in which the case worker should provide services of various types to strengthen family life by improving home conditions, and sets forth steps which the case worker should take in certain instances to protect children who are in a bad home situation. See Brief for defendants, page 42. As stated above, the State policy deals with services, not eligibility.

The case before this Court appears to arise from the application of a "suitable home policy," in the Federal sense of that phrase. The plaintiff has been found ineligible because of her conduct. From the allegations, this litigation does not appear to raise an element of the "true" substitute father situation, that is, a man in the house who acts like a father (regardless of whether he may be a good or a bad father.) Here, the facts suggest that the man involved has his own family and lives with them; also there is some evidence that he may visit the house for the purpose of maintaining a sexual relationship with the mother. This case, therefore, presents a question of "suitable home" (conduct of the parent) rather than "substitute father" policy.

We believe this distinction is important, because once the true nature of the eligibility condition is disclosed, the Federal Law and Policy is quite clear in this area. Both the Federal Administering agency and, later, the Congress, have clearly taken a position prohibiting a policy which does nothing more than declare a child ineligible for assistance because the home is found unsuitable. This was first announced by Secretary Flemming in 1961. That interpretation of the Social Security Act was supported later in that same year when Congress amended the Social Security Act by adding what is presently the first portion of Section 404 (b) (42 U. S. C. 602 (b)). The Alabama agency was explicitly informed by the Bureau of Family Services within the Department of Health, Education and Welfare that the so-called "Substitute Father" regulation was "not in conformity with Section 404 (b) of the Social Security Act" and the Flemming regulation insofar as eligibility was conditioned upon the conduct of the mother. (Letter from Steininger, dated December 11, 1964, P. Ex. 1.)

The Department will be available in the event the Court determines that we might be of further assistance in this case.

Sincerely,

/s/ John Doar,
John Doar,
Assistant Attorney General,
Civil Rights Division.

cc: Honorable John Godbold
United States Circuit Judge
Montgomery, Alabama

Honorable Virgil Pitman
United States District Judge
Box 565
Mobile, Alabama

Honorable McDonald Gallion
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EXHIBIT L TO APPELLANTS' BRIEF.

H. T. No. 139

Handbook of Public Assistance Administration

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Part IV Eligibility, Assistance, and Services

2000-2999 Application, Determination of Eligibility, and Furnishing Assistance 2/8/68

2000. *Application, Determination of Eligibility, and Furnishing Assistance*

2100. *Provisions of the Act*

(a) The second section of titles I, IV, X, XIV, and XVI of the Social Security Act requires that a State plan must provide:

"such methods of administration . . . as are found by the Secretary to be necessary for the proper and efficient operation of the plan;" (Secs. 2 (a) (5) (A), 402 (a) (5) (A), 1002 (a) (5) (A), 1402 (a) (5) (A), and 1602 (a) (5) (A)).

"that all individuals wishing to make application for [assistance] shall have opportunity to do so, and that [assistance] shall be furnished with reasonable promptness to all eligible individuals;" (Secs. 2 (a) (8), 402 (a) (10), 1002 (a) (11), 1402 (a) (10), and 1602 (a) (8)).

(b) Sections 2 (a) (10) (B), 2 (a) (11) (D), and 1602 (a) (13) specify that a State plan under title I or XVI must:

"include reasonable standards, consistent with the objectives of this title, for determining eligibility for and the extent of" aid or assistance under the plan.

2200. *Requirements for State Plans*

A State plan for OAA, AFDC, AB, APTD, or AABD must provide that:

(a) The policies and procedures for taking applications and determining eligibility for assistance or other services will be consistent with program objectives; will respect the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964, and all other relevant provisions of Federal and State laws; and will not result in practices that violate the individual's privacy or personal dignity, or harass him, or violate his constitutional rights.

2200—p. 2

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2200. *Requirements for State Plans* (continued)

(b) (1) Each person who wishes to do so will be given an opportunity to apply without delay for assistance,

(2) Applicants will be informed about the eligibility requirements and their rights and obligations under the program,

(3) Prompt action will be taken on each application, within reasonable State-established time standards (which, effective July 1, 1968, will not exceed 30 days), and

(4) Assistance will be provided promptly and will continue regularly to all eligible persons until they are found to be ineligible.

(c) Each decision regarding eligibility or ineligibility will be supported by information in the applicant's or recipient's case record.

(d) Eligibility for continuing assistance will be redetermined:

(1) Periodically, within agency-established time standards, no less frequently than every 3 months in AFDC-UP, 6 months in other AFDC cases, and 12 months in the other categories, on eligibility factors subject to change.

(2) Promptly, within agency time standards, not in excess of 30 days after the agency obtains information that indicates that changes in a recipient's circumstances may affect his eligibility or the amount of assistance.

(e) In determining initial and continuing eligibility:

(1) Applicants and recipients will be relied upon as the primary source of information upon which the agency's decision is made about their eligibility.

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2200. *Requirements for State Plans* ((e) continued)

(2) The agency will help applicants and recipients provide needed information, as necessary, or will obtain the information for them if, because of physical, mental, or other difficulties, they themselves are unable to provide it.

(3) Except where a declaration form is used to determine eligibility, each determination will include at least one interview with the applicant or recipient, or if direct contact with him is impractical or would delay case action, with someone acting responsibly for him.

(4) If a declaration form to be filled out by the applicant or recipient, or someone acting for him, is used, simple eligibility requirements will be imposed, with simplified forms relating primarily to eligibility for assistance, and a system will be established to test the validity of case decisions based on the simplified form.

(5) Verification of circumstances pertaining to eligibility will be limited to what is reasonably necessary to ensure the legality of expenditures under the program.

(6) Written notice will be sent to applicants and recipients that assistance has been authorized in a stated amount or that it has been denied or terminated for a specified reason.

(f) The State agency will establish and maintain methods by which it will be kept currently informed about local agencies' adherence to the State plan provisions and to the State agency's procedural requirements for determining eligibility, and it will take corrective action when necessary.

2300. *Criteria for the Administration of the Plans*

(a) The State agency establishes and applies written policies and procedures for taking applications and determining eligibility for assistance or services that are consistent

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2300: *Criteria for the Administration of the Plans*

((a) continued)

with the objectives of the program and respect the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964, and all other relevant provisions of Federal and State laws and do not result in practices that violate the individual's privacy or personal dignity, or harass him, or violate his constitutional rights. The agency especially guards against violations of legal rights and common decencies in such areas as entering a home by force, or without permission, or under false pretenses; making home visits outside of working hours, and particularly making such visits during sleeping hours; and searching in the home, for example, in rooms, closets, drawers, or papers, to seek clues to possible deception.

The State agency assures itself that supplementary locally developed procedures and practices are consistent with IV-2200 (a).

(b) To assure the right to apply (IV-2200 (b)):

(1) Agency policy differentiates between an "inquiry" and an "application," and defines an "applicant" and an "application"

in accordance with the Federal definitions in IV-2400.

(2) Agency policies and procedures facilitate the right of individuals to apply for assistance and assure that no one is refused the opportunity to apply.

(3) The agency accepts as an application any request for assistance, orally or in writing, made by an individual in his own behalf or by someone authorized to act for him.

(4) Each application is disposed of by a finding of eligibility or ineligibility unless the applicant voluntarily withdraws his application, and disposition is supported by:

(i) Written notification to the applicant that assistance in a stated amount has been authorized; or

2300. *Criteria for the Administration of the Plans*

((b) (4) continued)

(ii) Written notification to the applicant that his application is denied, including the reason for the denial, with a notice of a right to request a fair hearing about the decision; or

(iii) An entry in the case record that a notice has been sent to confirm the

applicant's notification to the agency that he does not desire to pursue his application; or

(iv) An entry in the case record that the application has been disposed of because of death or inability to locate the applicant.

(5) Applicants are informed of the agency's time standard for promptness in acting on applications (effective July 1, 1968, not in excess of 30 days), which is specified in agency policy, and that it covers the time from the date of application to the date the applicants are determined eligible and receive their first assistance check or notice of denial of assistance, and of their right to request a hearing before the State agency if the standard is not met regarding their applications.

(6) Agency policies on standards of promptness for acting on applications are not used as a basis for denying applications; they are exceeded in practice only in unusual situations (e. g., where the agency cannot reach a decision because of failure or delay on the part of the applicant or an examining physician to provide needed information) and in a small percentage of cases; and in such instances, the case record shows that the delay results either from circumstances within the claimant's control, or from some administrative or other emergency that could not reasonably be controlled by the agency.

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2300. *Criteria for the Administration of the Plans*

((b) continued)

(7) The agency assures itself that local agencies establish and maintain methods of controlling the steps in the application process; through reporting and other administrative methods, it identifies problem areas in connection with the taking of and acting on applications and takes corrective action.

(8) The agency makes its rules and policies readily available to applicants, recipients and other interested individuals. This includes a specially developed bulletin or pamphlet explaining the rules regarding eligibility and appeals in simple, understandable terms, publicized and available in quantity.

(9) The agency continues to provide financial assistance in accordance with an authorization of award in a specified amount until:

(i) It makes a finding of ineligibility and sends the recipient a notice of discontinuance, or

(ii) It makes a finding and notice of award for a changed amount of assistance, or

(iii) It makes a finding and sends a notice of a suspension of assistance for a temporary period, because the recip-

ient has received income to meet or for some other reason will not be in need of assistance for a short period.

(c) The agency maintains identifiable records, concerning all applicants and recipients, that

(1) Support decisions on eligibility that are based on facts—statements about eligibility requirements that have been substantiated by observation, from information filed by the applicant in his declaration, or from the agency's

2300. *Criteria for the Administration of the Plans*

((c) (1) continued)

own records or public records, or when necessary, from other sources—that show that all conditions of eligibility are met or that at least one condition of eligibility is not met,

(2) Provide a valid basis for accounting for expenditures of public funds, and

(3) Will assure the availabilty of needed information if the applicant or recipient appeals to the State agency for a fair hearing.

(d) Eligibility is reconsidered and redetermined periodically and whenever the situation requires it. Specifically, the agency:

(1) Identifies the conditions of eligibility subject to change.

(2) Takes appropriate timely action when there is information in advance that changes are likely to occur in an individual's situation which may affect his eligibility or the amount of his assistance.

(3) Acts promptly—within the applicable agency time standards—to determine continuing eligibility, when it learns from the recipient or other source (e. g., another person or agency), that the recipient's situation has so changed that his eligibility or the amount of his assistance may be affected.

(4) Redetermines eligibility regularly, within the applicable agency time standards specified in agency policy, at which time all eligibility factors subject to change are reconsidered.

(5) Gives advance notice of questions it has about an individual's eligibility so that a recipient has an

2300. *Criteria for the Administration of the Plans*

((d) (5) continued)

opportunity to discuss his situation before receiving formal written notice of reduction in payment or termination of assistance.

(e) In the process of determining initial and continuing eligibility:

(1) The agency, in policy and practice, recognizes the rights and responsibilities of applicants and recipients to be responsible participants in their relationship with that agency; it makes clear to them the kinds and sources of factual information that are acceptable as a basis for establishing eligibility; it uses them as the primary source of information about facts concerning their eligibility.

(2) The agency takes no steps in the exploration of eligibility to which the applicant or recipient does not agree; it obtains specific consent for outside contact (whether with social agencies, doctors, hospitals, and similar resources, or with relatives or other individuals); the consent covers the purpose of the contact as well as the individual or agency to be consulted; and where collateral sources are contacted, a clear interpretation is furnished of what information is desired, why it is needed, and how it will be used. If other procedures are followed in an exceptional situation, they are consistent with IV-2200 (a) and IV-2300 (a), and the case record specifies the reasons why they were needed and the specific procedures followed.

(3) If the agency does not use a declaration form, in each determination of eligibility the agency has a personal interview with the applicant or recipient, unless this is impractical or would delay case action. If

difficulties of transportation or other causes preclude a personal interview, contact is made by telephone or correspondence

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((e) (3) continued)

or with someone who can act responsibly for him, except that, in initial determinations of eligibility, a personal interview with the applicant is made as soon as possible.

(4) If the agency has to assume responsibility for the entire process of determination of eligibility, or for parts of it, because of the individual's inability to participate in establishing his eligibility, the agency takes measures to help him establish his eligibility for assistance, and it adheres to the same principles as would be followed if he were participating, including making discriminating selection of sources to be contacted.

(5) When available information from the applicant or recipient is inconclusive and does not support a decision of eligibility, the agency explains to the individual what questions remain and how he can resolve or help to resolve them, what actions the

agency can take to resolve them, and the necessity of resolving the questions if eligibility is to be established or continued. If the individual is unwilling to have the agency seek verifying information, the agency, unable to determine that eligibility exists, denies or terminates assistance. In such instances, the individual is notified in writing of the decision, and that he has the right to request a fair hearing on the decision and a right to re-apply at any time.

(6) If a declaration form is used in the determination of eligibility process:

(i) Eligibility conditions for the program, both as to number and content, are simple, easily understood by applicants and recipients, and can be determined objectively.

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2300. *Criteria for the Administration of the Plans*

((e) (6) continued)

(ii) Forms are simple, clear, relate primarily to eligibility for a specific program or programs, and meet Federal standards.

(iii) Agency policies and procedures assure that appropriate staff is available to

assist individuals who are unable to fill out their own forms or who wish assistance.

(iv) The agency's system to test the validity of the determinations based on declaration forms includes methods to test the validity of a continuous random sample of all positive and negative case actions—initial and redeterminations—and the methods, forms and procedures meet Federal standards and appropriately relate to the federally required quality control.

(f) Individuals are informed of the reason(s) for reduction or termination of assistance by a statement of the specific agency policy which serves as the basis for the action. Such notification is given in writing and orally when necessary for clear understanding. There is the same emphasis on helpfulness by agency staff to individuals in connection with the redetermination of eligibility, reduction or termination of assistance as there is in the application process.

(g) The State agency obtains information through statistical and other reports, field visits, and other methods, as to the extent to which local agencies adhere to the State's plan provisions concerned with the Federal requirements, and to the State's policies and procedures for taking applications and making determinations of eligibility; and it takes appropriate action when the Federal requirements and State requirements are not met.

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2400. *Interpretation*

Terms used throughout this chapter are defined as follows:

(a) *Applicant*—a person who has, directly or through someone acting responsibly for him, requested public assistance from the agency administering the program and whose application has not been terminated.

(b) *Application*—an action by which an individual indicates to the agency administering public assistance his desire to receive assistance. The relative with whom a child will live ordinarily makes application for a child for AFDC.

(c) *Inquiry*—a request for information about eligibility requirements for public assistance that is not a request for assistance, though it may be followed by such a request.

Respect for the constitutional and other legal rights and the personal dignity and right to privacy of applicants for and recipients of public assistance requires that the public assistance agency be aware that complex legal issues affecting personal rights may be involved in certain types of practices.

Unnecessary inquiries, both of the recipient and of collateral sources, and embarrassment to the recipient would normally be considered harassment. The simple presence or absence of words of permission or consent to certain procedures does not dis-

pose of questions of law or propriety, as courts have frequently refused to give effect to purported consent where surrounding circumstances indicate that choice was not free. Therefore, the public assistance agency has a responsibility to be alert to avoid violation of either legal rights or common decencies. Agency policies that present obstacles to making application, such as requiring the application to be made in person or at the agency's office, requiring the presentation of proofs of one or more eligibility conditions, or requiring conclusive information

2400. *Interpretation* (continued)

about the eligibility of the applicant as a condition to accepting the application, are inconsistent with the Federal requirement that applications be accepted without delay.

Staff of the agency should make arrangements to meet an individual outside of their working hours only when the agency cannot see the individual during working hours.

In requiring that a State plan provide that redeterminations of eligibility will be made periodically, within maximum specified time periods, it is recognized that the situations of families with children are apt to change more frequently than others.

Reliance on applicants and recipients as the primary source of information (IV-2200 (e) (1)) will enable the agency to determine initial or continuing

eligibility in a large percentage of cases on the basis of information provided by the individual, supplemented, if necessary, by information from public records (i. e., records of a public agency). Such reliance on the individual includes placing responsibility on recipients for notifying the agency, on the basis of instructions understood by them, about changes in their situations that may affect the amount of assistance to which they are entitled or may terminate their eligibility.

Relying on the individual as a primary source of information does not relieve the agency of the responsibility to recognize the differing capacities of applicants and recipients to discharge their responsibilities to the agency. Some can provide or obtain needed information after the agency explains what information is needed; others will need specific directions to sources of information; others may want, or have to rely on, the agency to obtain the information for them.

EXHIBIT M TO APPELLANTS' BRIEF.

H. T. No. 140

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6000. *Fair Hearings*

6100. *Provisions of the Act*

(a) Sections 2 (a) (4), 402 (a) (4), 1002 (a) (4), 1402 (a) (4), and 1602 (a) (4) read as follows: "A State plan . . . must . . .

"provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for . . . [aid or assistance under the plan] is denied or is not acted upon with reasonable promptness."

(b) Sections 6 (a) (5), 406 (b) (2) (E), 1006 (5), 1405 (5), and 1605 (a) (E) authorize Federal financial participation in protective payments "but only with respect to a State whose State plan . . . includes provision for . . .

"opportunity for a fair hearing before the State agency on the determination . . . [of need for protective payment] for any individual with respect to whom it is made."

6200. *Requirements for State Plans*

A State plan for OAA, AFDC, AB, APTD, or AABD must provide that:

(a) The State agency will be responsible for fulfillment of fair hearings provisions, and shall specify the hearing authority.

(b) An opportunity for a fair hearing before the State agency will be granted to any individual requesting a hearing because his claim for as-

sistance is denied, is not acted upon with reasonable promptness, or because he is aggrieved by any other agency action affecting his receipt or termination of assistance, or by agency policy as it affects his situation.

(c) Decisions by the hearing authority, rendered in the name of the State agency, will be binding on the State and local agency. The State agency will establish and maintain a

6200. *Requirements for State Plans* ((c) Continued)

method for informing, at least in summary form, all local agencies of all fair hearing decisions by the hearing authority, and the decisions will be accessible to the claimants, their representatives, and the public (subject to provisions relating to safeguarding public assistance information).

(d) The hearings will be conducted by an impartial official (or officials) of the State agency.

(e) Hearing procedures will be issued and publicized by the State agency for the guidance of all concerned.

(f) Every claimant will be informed in writing at the time of application and at the time of any agency action affecting his claim

(1) of his right to a fair hearing;

(2) of the method by which he may obtain a hearing;

(3) that he may be represented by others including legal counsel; and

(4) of any provision for payment of legal fees by the agency.

(g) The hearing will be conducted at a time, date, and place convenient to the claimant, and adequate preliminary written notice will be given.

(h) When the hearing involves medical issues, a medical assessment other than that of the person or persons involved in making the original decision will be obtained and made a part of the record if the hearing officer or the appellant considers it necessary.

(i) The claimant or his representative will have the opportunity

(1) to examine all documents and records used at the hearing;

(2) at his option, to present his case himself or with the aid of others, including legal counsel;

6200. *Requirements for State Plans* ((i) Continued)

(3) to bring witnesses;

(4) to establish all pertinent facts and circumstances;

(5) to advance any arguments without undue interference; and

(6) to question or refute any testimony or evidence.

(j) Prompt, definitive, and final administrative action will be taken within 60 days from the date of the request for a fair hearing. The claimant will be notified of the decision, in writing, in the name of the State agency and to the extent it is available to him, of his right to judicial review.

(k) When the hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to the hearing, the agency will make the corrected payments retroactively to the date the incorrect action was taken.

(l) The hearing officer's (or panel's) recommendations shall be based exclusively on evidence and other material introduced at the hearing. The verbatim transcript of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the hearing officer's or panel's recommendations, will constitute the exclusive record for decision by the hearing authority and will be available to the claimant at a place accessible to him or his representative at any reasonable time.

6300. *Criteria for the Administration of the Plans*

(a) The State agency establishes policies and procedures that carry out the purpose and provisions of this policy and that assure equity of treatment in relation to the laws and standards pertaining to assistance.

The State agency takes the necessary steps to see that there is uniformity in the application of agency policy in similar situations.

6300. *Criteria for the Administration of the Plans* (Continued)

(b) A request for a hearing is considered as any clear expression (oral or written) by the claimant (or person acting for him, such as his legal representative, relative, or friend) to the effect that he wants an opportunity to present his case to higher authority. The freedom to make such a request is not limited or interfered with in any way, and agency emphasis will be on helping the claimant in submitting and processing his request, and in preparing his case, if needed.

(c) Opportunity for a fair hearing includes:

(1) Consideration of any action, or failure to act with reasonable promptness, on a claim for assistance which includes undue delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and suspension or discontinuance of assistance in whole or in part;

(2) Consideration of the agency's interpretation of the law, and the reasonableness and equitableness of the policies promulgated under the law, if the claimant is aggrieved by their application to his situation;

(3) Consideration of agency decisions regarding:

(i) Eligibility for assistance in both initial and subsequent determinations,

(ii) Amount of assistance or change in payments,

(iii) The manner or form of payments, including restricted or protective payments, even though no Federal financial participation is claimed, and

(iv) Conditions of payments, including work requirements.

(d) Provision is made for reasonable time in which to appeal agency action.

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6300. *Criteria for the Administration of the Plans* (Continued)

(e) Final administrative action is taken within the 60-day limit (IV-6200, item j), except that where the claimant requests a delay in the hearing in order to prepare his case or for other essential reasons, reasonable time is given and such extra time may be added to the 60 days.

(f) The agency does not deny or dismiss a request for a hearing except where it has been withdrawn by the claimant in writing or abandoned.

A request for a hearing is considered abandoned only if neither the claimant nor his representative appears at the time and place agreed upon for the hearing, and if within a reasonable time after the mailing of an inquiry as to whether he wishes any further action on his request for a hearing, no reply is received by either the local or State agency.

(g) The hearing authority may be the highest executive officer of the State agency, a panel of agency officials or a hearing officer appointed for that purpose, but no person who participated in the local decision being appealed will participate in a final administrative decision on such case. The hearing authority is responsible for a final administrative decision in the name of the State agency on all issues that have been the subject of a hearing. The decision of the hearing authority is binding on the State and local agency. The State agency is responsible for seeing that the decision is carried out promptly.

Insofar as may be applicable, a decision in favor of the claimant applies retroactively to the date the incorrect action was taken, and also applies prospectively.

(h) The impartial official (or officials) of the State agency who is responsible for conducting the hearing has not been involved in any way with the action in question.

(i) The issuance of hearing procedures is in the form of rules and regulations, or in some other form in which they will be publicized.

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6300. *Criteria for the Administration of the Plans*
(Continued)

(j) Written notification and, to the extent possible, oral explanation of the right to and procedure for requesting a fair hearing are given at the time of application. Written notice, and oral explanation as necessary, are given at the time of an agency action affecting the claim for assistance, including change in or termination of assistance.

(k) Individuals are informed of their right to be represented at fair hearings by others. At his option, the claimant may be represented by legal counsel or by a relative, friend or other spokesman, or may represent himself.

(l) The convenience of the claimant is considered in setting the date, time, and place for the hearing. Notice is given in writing with adequate preliminary information about the hearing procedure necessary for his preparation for the hearing and effective presentation of his case. He is advised as to the use of witnesses and legal counsel or other representative, as well as any procedure or financial provisions for obtaining legal representation, including availability of fees for legal counsel from the agency.

(m) When an assessment by a medical authority, other than the one involved in the decision un-

der question, is requested by the claimant, it is obtained, at agency expense, from a medical source satisfactory to the claimant. The hearing officer can also consider the physician's report in the record or can request additional evidence. The assessment of such medical authorities will be reported in writing or by personal testimony as an expert witness for the hearing record.

(n) The claimant or his representative has adequate opportunity to examine material that will be introduced as evidence prior to the hearing as well as during the hearing, to give all the evidence on points at issue he believes necessary without undue interference, to ask for substantiation of any statements made by others, and to present evidence in rebuttal.

6300. *Criteria for the Administration of the Plans* (Continued)

(o) Non-record or confidential information which the claimant does not have an opportunity to hear or see is not made a part of the hearing record or used in a decision on the appeal. The hearing officer does not review the case record, or other material prior to the hearing unless such material is made available to the claimant or his representative.

6400. *Interpretation*

(a) *Opportunity for a Fair Hearing*

Fair hearing procedures, including the conduct of the hearing, are designed to assure the right of every claimant to demand and obtain a fair hearing. The claimant's freedom to request a hearing, whenever he believes that proper consideration has not been given to all the circumstances surrounding his claim, is a fundamental right and is not to be limited or interfered with in any way.

Since, under the Federal act and the State plan, every aggrieved claimant is entitled to the opportunity for a hearing, only the claimant may withdraw his request for a hearing and this is to be in the form of a written withdrawal.

Effective complaint and adjustment procedures, whereby corrective action may be easily requested and readily taken without the need for a hearing, are necessary, when indicated. Advance opportunity afforded the recipient to respond to questions which could result in change of grant or termination is a significant part of such procedures. So is written, and whenever practical, oral information of the reasons for change, denial, or termination. This is particularly important where the agency decision is based on judgmental factors or eligibility requirements that entail evaluative decisions on the part of workers, as compared to decisions based on non-debatable facts (such as receipt of OASI, death, etc.). However, the State and local agency adjustment procedures cannot be allowed to interfere with the hearing process.

6400. *Interpretation* ((a) Continued)

The claimant's right to a hearing includes the privilege of presenting his case in any way he desires. Some will wish to tell their story in their own way, some will desire to have a relative or friend present the evidence for them, and still others will want to be represented by legal counsel. In many instances the recipient's position can best be presented by an attorney. In order for the claimant to obtain an attorney, legal fees may need to be provided by the State. Federal financial participation is available in meeting the cost of these fees. States are urged to provide payment for the services of an attorney, or refer recipients to attorneys otherwise available in the community, because of the skill and knowledge of the legal profession in these matters. Furthermore, the claimant may bring any witnesses he desires to help him establish pertinent facts and to explain his circumstances.

The hearing is conducted in an informal rather than formal court-type procedure in order to serve the best interests of the claimant; however, the hearing is to be subject to the requirements of due process.

(b) *Publication of Hearing Procedures*

The publication of hearing procedures in the form of rules and regulations or a clearly stated

pamphlet helps to emphasize the importance of the procedure. This material is useful to applicants and recipients or to others interested in their behalf. It contributes to the fairness of the hearing procedure, and emphasizes that there is "due process" in program administration affecting the right to public assistance.

(c) *Informing the Claimant of His Right to a Hearing*

Written notification of the right to a hearing may be on the application form and other forms routinely used by the agency which go to applicants and recipients, as well as an explanatory pamphlet distributed by the agency. Oral explanations should also be given regarding the policy on hearings at intake and at time of a change in eligibility.

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6400. *Interpretation* ((c) Continued)

The purpose of informing the claimant of his right to a hearing, in writing, and whenever practicable orally, is to assure that the claimant fully understands this right. This right is further assured by the agency explaining the right to a hearing in understandable terms and in being helpful as needed in the preparation for and conduct of the hearing.

(d) *Convenience of the Claimant Considered*

The agency has not discharged its responsibility for a hearing unless it has taken all steps

necessary to enable a claimant who requested a hearing to attend the hearing in person or to be represented by a person of his own choosing. If the hearing is to be held at a considerable distance from the locality of the claimant's residence, it may be necessary to provide for the transportation and other costs of the claimant, his representative, and his witnesses.

Notice to claimant as to the hearing being scheduled in his behalf includes information about the fair hearing as an informal administrative procedure, in which a dissatisfied claimant or his representative may present his grievance with the help of witnesses or legal representation to show why action or inaction in his case should be corrected by the State agency.

(e) *Impartiality of Official Conducting the Hearing*

The person conducting the hearing shall not have been connected in any way with previous actions or decisions on which the appeal is made. For example, a field supervisor who has advised the local agency in the handling of a case would be disqualified from acting as the hearing officer.

(f) *Impartiality of the Hearing Authority*

The hearing authority shall not have been directly connected with the agency action about which the claimant is appealing.

6400. *Interpretation* ((f) Continued)

For example, a State board member who has participated as a county board member or in another capacity in the local action on a case would disqualify himself from rendering a final decision on the particular case. This does not preclude the State director or administrative board from signing the decision in the name of the State agency, even though previously involved in the case.

(g) *Prompt, Definitive, and Final Action*

The hearing authority is responsible for rendering a conclusive decision. When the hearing authority is different from the hearing officer, such authority may adopt the recommendations of the hearing officer, or reject them and reach different conclusions on the basis of the evidence at hand, or refer the matter back to the hearing officer for a continuation of the hearing, because the materials submitted are insufficient to serve as the basis for a decision. The State agency is responsible for assuring that the decision is carried out. Various methods, such as a report by the local unit to the State agency of action taken to carry out the hearing decision or follow-up by the State office staff, may be used. Remanding the case to the local unit for further consideration is not a substitute for "definitive and final administrative action."

The requirement for prompt, definitive, and final administrative action means that all requests for a hearing are to receive immediate attention and will be carried through all the steps necessary to completion. The requirement is not met if the State agency dismisses such requests for any reason other than withdrawal or abandonment of the request by the claimant. The over-all time limit of 60 days between the date of the request for the hearing and the date of the final administrative action, will serve as one of the safeguards of prompt, administrative action. Detailed controls of individual steps in the hearing process, such as: time limits for accepting, forwarding, and acknowledging a request for a hearing, notice to the claimant, and date of the hearing will facilitate proper administration of the hearing process.

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6400. *Interpretation* (Continued)

(h) *Opportunity to Examine the Official Record*

The record of the proceedings at the hearing, which constitutes the official record, is to be made available to the claimant or his representative to examine, if he desires. If any additional material is made a part of the hearing record, this, too, would be made available.

(i) *Judicial Review*

In some States, the right of judicial review may be prescribed by statute specifically au-

thorizing review of the agency decision on the basis of the record of administrative proceedings. In other States, even in the absence of statutory provisions, a claimant may be able to invoke the remedy of judicial review on the showing that the agency action was "unreasonable, arbitrary, or capricious." The content of the notice of decision, as regards judicial review, would depend upon the kind of remedy available in the State.

6500. *Federal Financial Participation*

Federal financial participation is available in:

(a) Payments made to carry out hearing decisions, or to take corrective action prior to the hearing, including corrected payments retroactively to the date the incorrect administrative action was taken.

(b) Payments of assistance continued pending a hearing decision.

(c) Administrative costs necessary for:

(1) Carrying out the hearing procedures;

(2) Providing transportation and other costs for the claimant, his representative and witnesses to and from the place of the hearing;

(3) Fees for legal counsel; and

(4) Other costs, expenditures, and fees reasonably related to the hearing, including expenses involved in obtaining an additional medical assessment.